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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/640,553	08/13/2003	Randal Alan Stevens	7173/118	8361
38356 7590 06/09/2009 BROOKS, CAMERON & HUEBSCH, PLLC 1221 NICOLLET AVENUE, SUITE 500 MINNEAPOLIS, MN 55403				
EXAMINER VARGOT, MATHEU'D				
ART UNIT		PAPER NUMBER		
1791				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/640,553

Applicant(s)

STEVENS, RANDAL ALAN

Examiner

Mathieu D. Vargot

Art Unit

1791

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 October 2008.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 3-21 and 23-27 is/are pending in the application.
4a) Of the above claim(s) 27 is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1, 3-21 and 23-26 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SI/08)
Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

1.Applicant's election with traverse of Species A, claims 1, 3-21 and 23-26 in the reply filed on February 18, 2009 is acknowledged. The traversal is on the ground(s) that a restriction is optional and should not be made in cases where no serious burden in examining the claims is present. This is not found persuasive because in the instant case, the rejection of claim 27 would not be the same as that of the other claims since claim 27 does not take an impression of the auditory canal but rather measures it directly. Hence, the different sets of claims are considered to be different species with different issues that would require separate treatment.

The requirement is still deemed proper and is therefore made FINAL.

2.Claim 5 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 5, line 1, the dependency needs to be changed to —3— since claim 2 has been cancelled.

3.The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 6-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bellafiore in view of Widmer et al essentially for reasons of record. It is noted that previous claim 2 has been cancelled and put into claim 1, with the additional limitation that an impression of the auditory canal is actually taken from which the outside

dimensions are measured. Clearly, taking an actual impression would be necessary if measurements are to be taken from such an impression. Bellafore teaches taking an impression of the auditory canal and the limitation of previous claim 2 is submitted to be met in the combination of Bellafore and Widmer et al.

4. Claims 3-5 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bellafore in view of Widmer et al and Jordan et al essentially for reasons of record as set forth in paragraph 3, supra and paragraph 4 of the previous office action.

5. Applicant's arguments filed October 23, 2008 have been fully considered but they are not persuasive. Applicant submits that Widmer et al would not be applicable against the instant claims. First of all, applicant is believed to be incorrect in stating that Widmer et al does not obtain digitized data from an **impression** of the auditory canal. Attention is directed to column 14, line 53 through column 15, line 28, particularly col. 15, lines 1-8, where apparently models of the auditory canal are taken at different times and the models are scanned to obtain the data. At other portions of the patent, Widmer et al clearly obtains digitized data from the **auditory canal itself** (see col. 4, lines 1-9; col. 6, lines 20-32) and this data is used to construct the actual hearing aid—ie, no mold is made in the inventive process of Widmer et al. However, this fact does not obviate the rejection. Widmer et al indeed teaches that taking impressions of the auditory canal and making molds therefrom is known in the art, and these aspects are more clearly shown in Bellafore, which is the primary reference. Although Widmer et al considers his invention to be an improvement over that shown in Bellafore, and perhaps it is, there is simply no reason why one of ordinary skill in the art would not have utilized the

data acquisition techniques taught in Widmer et al on the positive impression (14) of Bellafiore to create a negative mold therefrom. Applicant had objected to the earlier rejection because Widmer et al did not actually make a negative mold, although the reference essentially discloses that such had been done in the prior art—ie, see column 1, lines 20-27. Indeed, Bellafiore is an example of such art, wherein a positive impression of the auditory canal is used to make a negative hearing aid mold therefrom. Given that a clear teaching of making a negative hearing aid mold from a positive impression of the auditory canal is known—from Bellafiore—it is submitted quite obvious that known techniques—ie, the obtaining of digital data as shown by Widmer et al, either directly from the auditory canal or from a model thereof—would have been applied to this process to facilitate the formation of the negative mold. Ie, instead of casting the negative mold around the impression, the digital data from the impression would be used directly to make the mold. Applicant suggests that the combination as applied would destroy the Widmer et al reference. However, the process of Widmer et al is not what is being modified. Rather, the aspects of digital data acquisition as taught in Widmer et al are being used in the process of Bellafiore to make the hearing aid mold itself, rather than casting the mold around the impression. One of ordinary skill in the art would realize that a mold made from digital data would possibly be more accurate than one made by casting, and such a mold would be more readily changed taking into account dynamic concerns noted in Widmer et al at col. 14, line 53 through col. 15, line 28. Jordan et al is merely being relied upon to teach the aspect of using a laser to generate the digital data. Although this reference is directed to the dental art, it is within

the purview of one of ordinary skill in the topographic art familiar with digital data acquisition. Indeed, laser scanning to acquire digital data is so well known that one of ordinary skill in almost any art would have been expected to have knowledge of it. Indeed, it is the most conventional way in which topographical data would be read from a surface and then digitized to make a computer image of the surface. In fact, it is probably inherent in the line from Widmer et al, "such molds are **scanned**, and the respective digitized data sets are stored..." (see col. 15, lines 5-6).

6.THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

7.Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mathieu D. Vargot whose telephone number is 571 272-1211. The examiner can normally be reached on Mon-Fri from 9 to 6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Johnson, can be reached on 571 272-1176. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

M. Vargot
June 8, 2009

/Mathieu D. Vargot/
Primary Examiner, Art Unit 1791